



Leading learning and skills

Consultation on Amendment to the Financial Memorandum Part 1

This document consults colleges and other interested parties on proposed amendments to the current financial memorandum between the Learning and Skills Council (LSC) and further education (FE) colleges.

June 2006

This document is of interest to FE college principals, chairs of governors, chairs of college finance committees, chairs of audit committees, directors of finance and clerks of governing bodies and in addition regional finance and resources directors at regional LSCs.

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Responses to this consultation are requested by
31 July 2006, and should be sent:

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- A: Revised Financial Memorandum Part 1
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- C: Membership of the LSC-Colleges Relationships Group

Executive Summary

This document invites comments from further education (FE) colleges and other interested parties by 31 July 2006. The document proposes changes to the financial memorandum part 1 that the Learning and Skills Council (LSC) has with FE colleges. The existing financial memorandum part 1 has not been updated for some time and reflects neither the LSC's current relationship with FE colleges nor good practice in the development of funding agreements. The changes do not propose any fundamental alterations in the LSC's financial relationship with colleges. The proposed financial memorandum (at Annex A to this document) better reflects the mutual obligations and expectations of both colleges and the LSC. Where possible, the financial memorandum removes duplication with other documents and consolidates into part 1 certain clauses from other LSC funding schedules with colleges. The proposed financial memorandum has been the subject of consultation with the LSC-College relations group, the College Finance Directors' group and other interested parties. Those wishing to respond may do so using the form at Annex B to this document.

Consultation on Amendment to the Financial Memorandum Part 1

Introduction and Background

1 This subject of this consultation is a revised financial memorandum between the Learning and Skills Council (LSC) and further education (FE) colleges. It proposes amendments to the previous version of the financial memorandum, which was issued by the Further Education Funding Council (FEFC) in 1999. It also invites comments on the proposed changes and other points of interest from FE colleges and other interested stakeholders. Details of the proposed changes that the LSC wishes to consult on are shown in the main body of this document. The revised financial memorandum is at Annex A. The response form is at Annex B.

2 In April 2001, the LSC inherited the powers and responsibilities of the FEFC. One of these responsibilities to the then Department for Education and Employment (DfEE) was to put in place a financial memorandum between the FEFC and FE colleges. The most recent version of the FEFC's financial memorandum was issued as FEFC Circular 99/48. Circular 99/48 made relatively minor changes to the previous version, itself a continuation of the first version that the FEFC had issued.

3 Since 2001, the LSC has simplified and rationalised its formal funding agreements with colleges. The numerous contracts and other documents used by the LSC's predecessor bodies have been consolidated into one set of schedules attached to an overarching financial memorandum. This has saved time and effort for both the LSC and colleges. This work was an early success in the drive to reduce bureaucracy, led by the Bureaucracy Busting Task Force, itself chaired by Sir George Sweeney.

4 However, the LSC has not updated the overarching financial memorandum itself, and FEFC Circular 99/48 is still in use. The LSC has worked with

colleges over a protracted period, most recently through the LSC-colleges Relationships Group (see Annex C for membership), to update FEFC Circular 99/48.

Reasons for change

5 The LSC now wishes to update its financial memorandum with FE colleges. One clear reason for this is because the current version is in the name of a predecessor organisation. Other reasons for change are that Circular 99/48:

- reflects the predecessor organisation's financial relations with colleges
- deals with issues no longer of central interest to the relationship and conversely does not deal with other issues that have become important
- does not reflect requirements on Government and the LSC, and good practice that has emerged since 1999
- contains material repeated elsewhere, particularly in the instrument and articles of government
- refers to FEFC terms and approaches in use at the time.

6 In relation to the last point above, the suggested changes as far as possible refer to the principles and objectives being addressed, rather than specific terminology. This is to avoid the revised financial memorandum becoming out of date.

7 Furthermore, the current financial memorandum has not kept abreast of more recently updated financial memorandums from other UK funding councils in the coverage of certain topics (although some funding councils' relationships with institutions do not parallel that which the LSC has with colleges).

8 The LSC issues a financial memorandum part 2 to colleges, which covers various statutory and LSC requirements on colleges. As part of the proposed revision to part 1 of the financial memorandum, the LSC has incorporated some clauses from part 2 into part 1, in shortened form. The LSC intends in due course to revise part 2 again, with a view to removing the need for it.

Consultation

9 Annex A presents the proposed revised financial memorandum in full, for inspection.

10 Given the scale of the changes, the LSC feels it would not be useful to identify and consult on every proposed change. The main body of this document and the consultation questions therefore present the broad issues of suggested changes rather than every item of detail. Where there are important proposed changes to (for example) definitions, these are highlighted for discussion in the main body of this document.

11 Annex B to this consultation summarises the consultation questions and invites colleges and other interested parties to send their responses by 31 July 2006 by email (financialmemorandum@lsc.gov.uk) or to the address shown on the inside of the cover sheet.

12 The nine shaded questions contained within paragraphs 14–42 are the same as the questions in the consultation questionnaire at Annex B.

Summary of Main Changes

13 The following section shows the headings in the revised financial memorandum (Annex A) and the paragraph numbers in the existing financial memorandum to which they relate.

Preamble (paragraphs 1-4)

14 Colleges and other users of the financial memorandum have told the LSC that it does not say why the document is needed, where the contents come from and also how it fits into the wider relationship between the LSC and colleges. This section has been considerably expanded, at the expense of adding a page to the document, from the previous 'Introduction and Background' in order to:

- set the financial memorandum in context
- describe the nature of grant-in-aid funding
- explain the principal sources of the clauses in the text
- note colleges' own responsibilities.

15 The preamble also explains that the financial memorandum describes a grant-in-aid relationship between the LSC and colleges, previously given in FEFC Circular 99/48 ('Definition of Exchequer Funds').

Consultation question 1: Do you agree that the financial memorandum should contain a preamble setting the document in context?

Colleges' expectations of the LSC (paragraph 5)

16 The initial consultation on the financial memorandum noted that it was a very one-sided document. This paragraph notes that such a document is mainly about what the LSC expects of colleges, but also that colleges are entitled to expect certain behaviours of the LSC. As such it expands on Circular 99/48 paragraph 5.

Consultation question 2: Do you agree that the financial memorandum should summarise a college's reasonable expectations of the LSC?

Legislation (paragraph 6)

17 This is a rewording and expansion of Circular 99/48 paragraphs 3 and 4 and notes the charitable status of colleges.

Definitions (paragraphs 7-8)

18 This section has been updated to reflect changes since 1999. It offers:

- new references to financial terminology, as defined in Companies Acts
- new distinctions between mandatory requirements and guidance on good practice.

19 The section offers new definitions for LSC funds, public funds and college funds. Circular 99/48 noted that Exchequer funds included those received from the FEFC and the DfEE, but that local authority funds were not Exchequer funds. While this is true, colleges receive Exchequer funds from across Government and from local authorities.

20 The LSC is concerned with ensuring that its funds are used for the purposes that Parliament and the Department for Education and Skills (DfES) intends.

21 Under the LSC's financial memorandum with the DfES, the LSC has a parallel responsibility for ensuring the regularity of the use of funds that colleges receive from the Higher Education Funding Council for England (HEFCE). The definition of public funds, for the purposes of regularity, therefore includes both LSC funds and HEFCE funds. This theme has been developed by the LSC through the clarification of the scope of regularity audit since 2004/05 and consulted upon at that time.

22 Beyond this, the LSC also acts in the public interest in ensuring that all college funds, received from whatever source, are properly treated as public funds. The clarification of this interest in propriety was similarly developed as part of regularity audit from 2004/05 and consulted upon then. The LSC may also have, or acquire through the Charities Bill if enacted, an interest in the regularity of use of all of a college's funds.

23 The proposed definitions also:

- adopt the term 'college' rather than 'board' as the entity with which the LSC does business. Circular 99/48 referred to boards on the advice that these were one and the same thing as corporations
- refer to financial terminology already in use by the LSC, as that defined in Companies Acts
- offer distinctions between mandatory requirements and guidance on good practice.

Financial memorandum (paragraph 9)

24 This new paragraph is a shorter version of the overview given at Circular 99/48 paragraph 3.

Responsibilities of the LSC (paragraphs 10-11)

25 This is reworded but not changed in intention (see Annex A).

Responsibilities of the college (paragraphs 12-16)

26 This was a very lengthy section in Circular 99/48 (paragraphs 8-11). It has been considerably shortened to remove:

- references to the clerk's responsibilities, at paragraphs 8 and 16 of Circular 99/48
- full repetition of the responsibilities of the governing body from the instrument and those of the principal from the articles of government
- a need to establish an audit committee, which is covered in the articles of government and the LSC's *Audit Code of Practice*
- the requirement on the governing body to establish and delegate to other committees, now generally accepted good practice in colleges
- the need for the governing body to receive a financial report every term, again generally accepted good practice in colleges.

27 While this section has removed the repetition of the articles of government, it does set out the stewardship role of the governing body in relation to both LSC funds and to public funds. Under Circular 99/48 paragraph 9, this role related only to the use of LSC funds.

Consultation question 3: Do you agree with the removal of the repetition of sections of the instrument and articles of government concerning the governing body, audit committee, principal and clerk?

Allocation of funds (paragraphs 17-21)

28 This replaces Circular 99/48 paragraph 18 'Virement'. It has been amended to:

- distinguish between recurrent and capital funds
- make clear the opportunities for colleges' judgement and for the LSC to maximise discretion in colleges' use of LSC funds, while reserving the LSC's right to earmark funds.

Payment of funds (paragraph 22)

29 This section removes references to the LSC's use of BACS to pay colleges. There is also interchange of Circular 99/48 paragraphs 17 to 22 on allocation and virement.

Capital transactions (paragraphs 23-25)

30 This section is largely unchanged from Circular 99/48 paragraphs 23-26 'Land and Buildings Transactions' except that it:

- raises the £1 million absolute limit for colleges to make capital transactions without LSC consent to £1.5 million
- adds as a footnote a definition of the value of rent relevant to seeking LSC consent, previously at paragraph 12 of Circular 99/48 'Explanatory Notes'
- removes references to keeping holdings of capital assets under review and maintaining property in accordance with the property strategy.

31 The requirement on colleges to seek professional advice when disposing of land and buildings is statutory under charity law as well as an LSC requirement.

Borrowing and leasing (paragraphs 26-27)

32 This section is unchanged from Circular 99/48 paragraphs 29 and 30 except that it removes the £1 million absolute limit on consent in favour of a 5 per cent threshold as the only stated limit.

Consultation question 4: Do you agree with the abolition of an absolute monetary limit normally requiring LSC consent for college borrowing?

College companies (paragraph 29)

33 This notes the long-standing requirement for colleges to gain the LSC's consent to participate in LSC-funded companies providing education.

Financial reporting (paragraphs 30-33)

34 This section replaces Circular 99/48 paragraphs 31-34 'Accounts and Financial Management'. It:

- removes the detail on the timing and signature of the college's accounts in favour of the LSC's specification on financial statements (currently the LSC's Accounts Direction Handbook)
- requires colleges to make reasonable arrangements to publicise financial statements
- adds the requirement for the college to have effective risk management, including insurance
- changes the requirement from notification in the event of a risk to the college's liquidity, service delivery or asset base to a significant deterioration in financial position.

Consultation question 5: Do you agree with the need to notify the LSC of a significant deterioration in the college's financial position?

External institutions (paragraph 35)

35 Circular 99/48 paragraph 35 is removed. External institutions are now covered by their own funding agreements with the LSC.

Audit (paragraphs 34-38)

36 This section:

- clarifies that mandatory requirements under the LSC *Audit Code of Practice* are mandatory under the financial memorandum
- notes that the LSC may potentially perform a variety of audits at colleges, as well as reviews of financial management and governance. This reflects the various funding audits and other audit work developed both for FE since 1999/2000 and also the widening of the LSC's remit to cover many more of the funding streams that the LSC pays to colleges. All of this funding on occasion may be subject to LSC audit
- notes that the role of DfES internal auditors will normally be to accompany the LSC rather than carry out unaccompanied visits (although DfES auditors reserve the right to visit unaccompanied)
- sets out the length of time that colleges need to retain records in support of the financial memorandum and to meet the requirements of the European Social Fund.

Procurement and contracting (paragraph 39)

37 This statement notes the need for colleges to comply with relevant legislation and other requirements.

Payments to employees on termination of employment (paragraphs 40-42)

38 This was previously at Circular 99/48 paragraphs 1-7 'Explanatory Notes'. It has now been brought into the main body of the text.

Provision of information (paragraphs 43-48)

39 This section is considerably modified from Circular 99/48 paragraph 40. It:

- removes references to specific documents that are covered elsewhere in LSC requirements and guidance to colleges and that might go rapidly out of date
- extends provision of information to the LSC's agents
- states that information may be needed to meet the LSC's statutory responsibilities in the times and formats required
- recognises the need for the LSC to take account of the impact of requests for information on colleges and for the LSC to seek to use information already available
- gives the LSC an explicit power to investigate in order to get the information it needs, or to use estimates for payments, and to recover where estimates proved incorrect
- refers to the time allowed to colleges and to the LSC to respond to requests under the Freedom of Information Act
- removes Circular 99/48 paragraph 42, the requirement for colleges to inform the LSC of the intention to change their nature or location.

Consultation question 6: Do you agree with the explicit statement of the LSC's power to investigate in order to get the information it needs or to use estimates for payments, and to recover where estimates proved incorrect?

Consultation question 7: Do you agree with the removal of the requirement for colleges to inform the LSC of the intention to change their nature or location?

Interpretation (paragraphs 49-50)

40 This is expanded to cover future changes to and exercise of the LSC's rights, powers and remedies, and consultation with the college in this exercise.

Repayment (paragraph 51)

41 This replaces Circular 99/48 paragraph 43 'Penalties', making it clear that the LSC may seek repayment of funds rather than withdrawal of funds. Withdrawal of funds may be taken to mean withholding of future funding, whereas by exception the LSC may require colleges to repay funding already paid to them by the LSC.

Consultation question 8: Do you agree with the clarification that on occasion and by exception the LSC may require colleges to repay funds to the LSC?

Revision (paragraph 52)

42 This is a new section setting out how the LSC will go about revising the financial memorandum in consultation with colleges and representative bodies and inviting colleges to propose changes.

Consultation question 9: Do you agree that the LSC should make the requirement to consult on changes to the financial memorandum a part of the financial memorandum itself?

Explanatory notes

43 These have either been deleted or incorporated where considered necessary in the body of the financial memorandum. There are now no explanatory notes to the financial memorandum.

Annex A: Revised Financial Memorandum Part 1

Preamble

1 This financial memorandum sets out the financial relationship between the Learning and Skills Council (LSC) and colleges. While it necessarily concentrates on financial matters, the LSC's relationship with colleges goes well beyond this to a whole set of mutual obligations encompassing the wider communities and interests that both the LSC and colleges serve. For the financial arrangements set out in this financial memorandum to be effective, the LSC and colleges need to work in partnership and develop a relationship based on trust.

2 The financial memorandum describes a grant-in-aid funding relationship between the LSC and colleges. This is a form of government funding peculiar to bodies in which there is a high degree of public interest, such as colleges. Grant-in-aid funding is assumed to be continuous, requiring deliberate action to end it. Although grant-in-aid funding gives the LSC a high degree of interest in all aspects of colleges' operations, it is also a relationship well suited to trust and to colleges' autonomy. It also offers the LSC the flexibility to fund colleges in a way that recognises their position in the wider community.

3 The form of a financial memorandum for grant-in-aid is largely dictated by HM Treasury requirements for non-departmental public bodies and also the LSC's financial memorandum with the Department for Education and Skills (DfES). One of the DfES's financial memorandum requirements of the LSC is that the LSC should have a financial memorandum as a grant agreement in place with colleges for the purposes of regulating the relationship on financial and other matters. The LSC has interpreted the requirements from HM Treasury and the DfES in a way that maximises the ability of college governing bodies and principals to manage their own affairs while ensuring that there is a strong framework to account for public funds.

4 The key areas of the memorandum therefore reflect the LSC's own responsibilities for public

accountability over the funds it provides to colleges. Some parts of the financial memorandum focus on areas of particular interest, for example the considerable public investment in colleges' capital programmes, and the extent of colleges' liabilities that might accrue ultimately to the public purse. However, the LSC's expectation is that, as independent corporate bodies, colleges will take full control of their own financial affairs. The LSC does not consider that the financial memorandum includes any requirement which colleges should not expect of themselves or find unduly onerous.

The college's expectations of the LSC

5 This financial memorandum necessarily concentrates on the LSC's requirements and expectations of colleges and the memorandum does not try to capture all of the LSC's obligations to colleges. Colleges are entitled to expect that the LSC will conduct its business with them at all times to the highest standards required of public bodies. The LSC will act reasonably on the basis of the evidence available and on the LSC's objective analysis of this evidence. The LSC will be open and transparent with colleges and other stakeholders and will give reasons for all its decisions.

Legislation

6 The Learning and Skills Act 2000 gives the LSC the power to impose conditions in respect of its funding of providers of post-16 education and training. In this financial memorandum, the LSC sets out the terms and conditions on which it pays funds to the College. Nothing in this memorandum shall require the College to act in a manner which would cause it to lose its charitable status, or which would be inconsistent with its instrument and articles of government.

Definitions

7 For the purpose of this financial memorandum, the definitions in Table 1 apply.

Table 1: Definitions of terminology used in the financial memorandum.

| | |
|--------------------|---|
| Act | means the Further and Higher Education Act 1992, as amended by the Learning and Skills Act 2000 |
| DfES | means the Department for Education and Skills |
| College | means the educational institution conducted by the Further Education Corporation and named in part 2 of this memorandum |
| College funds | For the purposes of propriety, means all of a College's income and receipts derived from whatever source |
| ESF | means the European Social Fund |
| Governing Body | means the body established under or designated under the Act to conduct the College |
| Financial year | means the College's financial year 1 August to 31 July |
| LSC funds | means the funding paid to the College by the LSC |
| Principal | means the Chief Executive Officer or Principal appointed by the Governing Body |
| Public funds | For the purposes of regularity, means all of a College's income and receipts from the LSC and from the Higher Education Funding Council for England (HEFCE) |
| Secretary of State | means the Secretary of State for Education and Skills |
| Senior Postholder | means the Principal and holders of the other posts designated as senior posts by the Governing Body |

8 References to the financial position, financial statements, financial commitments and borrowing of the College mean the consolidated financial position, financial statements or borrowing of the College and its subsidiary undertakings as defined in the Companies Acts 1985 and revised by the Companies Acts 1989, and in accordance with generally accepted accounting principles. In this memorandum, shall and must denote mandatory requirements, and expects and should denote the LSC's view of good practice.

conditions that relate to them and where relevant any specific conditions that relate to the College or the financial year. The LSC will issue these schedules as appropriate in respect of each type of funding it annually allocates to the College.

The financial memorandum

9 The financial memorandum is in two parts. This Part 1 sets out the key financial terms and conditions under which the LSC provides funds to colleges. Part 2 sets out other key terms and conditions of funding. The financial memorandum is supported as necessary by further schedules that are specific to each college. These schedules concern allocations of LSC funds and the

Responsibilities of the LSC

10 The LSC's Chief Executive has been designated its accounting officer under the LSC's financial memorandum with the DfES. The LSC's accounting officer is responsible and accountable to Parliament for ensuring that the uses to which the LSC puts its funds are consistent with the purposes for which the LSC was given the funds and that the uses comply with the conditions attached to them. The LSC's accounting officer is also responsible for the regularity and propriety of expenditure for those uses and for securing the best possible value for money from them.

11 The DfES requires the LSC's accounting officer to monitor the College's compliance with the terms and conditions attached to the LSC's funds. The LSC's accounting officer must be satisfied that the College has appropriate arrangements for sound governance, financial management, securing value for money and accounting, and that the College's use of public funds is consistent with the purposes for which the funds have been given.

Responsibilities of the College

12 The Governing Body of the College has wide responsibilities under statute which are not repeated here. Specifically, it is responsible for ensuring that the College's funds are used only in accordance with the Governing Body's powers under the Act, this financial memorandum and any other conditions that the LSC may from time to time impose.

13 The Governing Body has wide discretion over its use of the College's funds and it is ultimately responsible for the proper stewardship of those funds. The Governing Body must ensure that it uses its discretion reasonably, and takes into account any relevant guidance on accountability or propriety issued from time to time by the LSC, the National Audit Office or Parliament.

14 The respective responsibilities of the Governing Body and the Principal are set out in the College's articles of government. Within this framework, the Governing Body shall require the Principal to take personal responsibility, which shall not be delegated, to assure them that there is compliance with the financial memorandum and all terms and conditions referred to above.

15 As accounting officer, the Principal may be required to appear before the Parliamentary Committee of Public Accounts, alongside the accounting officers of

the LSC and the DfES, on matters relating to the College's use of public funds and College funds.

16 The Principal shall be responsible for advising the Governing Body in writing if, at any time, in his or her opinion, any action or policy under consideration by the Governing Body is incompatible with the terms of the financial memorandum. The Principal shall be similarly responsible for advising the Governing Body in writing if the Governing Body appears to be failing to act where required to do so by the terms and conditions of the financial memorandum. Where the Governing Body determines to proceed despite the advice of the Principal, the Principal should consider the reasons the Governing Body gives for its decision. If, after considering the reasons given by the Governing Body, the Principal still considers that the action proposed by the Governing Body is in breach of the financial memorandum, the Principal shall advise in writing the LSC's accounting officer of the position.

Allocation of funds

17 The LSC will decide the amount of funds it will pay to the College in any year after the LSC has considered the activities to which the funds will be applied, and taking account of other competing demands on the resources granted to the LSC.

18 The LSC may distinguish between recurrent funds and capital funds. Recurrent funds are intended to meet the ongoing operating costs of the College. Capital funds are intended to meet expenditure on land and buildings, new construction and extension of and alteration to buildings and the purchase of any other fixed assets having an expected life of more than one year. Capital expenditure excludes the routine maintenance of buildings and other assets. The LSC will notify the College, in writing, of the allocation of relevant recurrent funds as soon as possible in advance of the academic year to which they relate. Ideally this will be at least four months in advance of the academic year.

19 The LSC will seek to not substitute its judgements for those that are properly at the discretion of the College. In particular the LSC will seek to maximise the College's discretion to use the LSC's funds in achieving the LSC's objectives for granting those funds as agreed with the College. On occasion, the LSC may allocate funds to the College for a specific purpose. Depending on the terms and conditions of the LSC's allocation, the College shall apply or spend, or both, any the funds only for that purpose.

20 The College or its sub-contractors shall not apply public funds to learning provision for which the College has already received other funding, public or otherwise, unless the LSC so specifies. Where the LSC identifies that the College has applied public funds in a way not specified by the LSC, the LSC may deduct the value of such funding from LSC funds payable to the College.

21 The College must not use the funding from this schedule to make bids or claims from any European source of funding on its own behalf or on behalf of the LSC without obtaining the LSC's written consent. The LSC will give reasonable consent. The LSC reserves the right to use LSC funds as match-funding for ESF co-financing projects. The College shall, if requested to do so by the LSC, inform learners or others that learning provision has been financed by the ESF.

Payment of funds

22 The LSC will make payments to the College in monthly instalments in accordance with a funding profile for the whole financial year. The LSC may be prepared on written application from the College to make exceptional ad-hoc payments to the College. Such payments will not be made in advance of the College's need to spend the money.

Capital transactions

23 The College should manage and develop its property with regard to the guidance issued from time to time by the LSC on property procedures, including strategic property management, option and investment appraisal, the affordability of the project and private finance. The LSC requires the College to normally apply the proceeds of asset sales to investment in land and buildings fixed assets. The College must seek independent professional advice when disposing of land and buildings.

24 The LSC requires the College to obtain its consent for capital transactions where the total cost or proceeds exceed £1.5 million or 5 per cent of the College's annual revenue, whichever is the greater. Where the transaction is a disposal or the renting or leasing of property to a third party, the College must seek to secure the best obtainable value for money. The total cost of a property transaction includes all costs whether these are to be met by the College or a third party.

25 Where the College proposes to dispose of or lease or rent¹ land and buildings which may have been acquired by public funds, the LSC may require the College to surrender some or all of the proceeds.

Borrowing and leasing

26 Save as provided for in the two bullet points below and any special conditions the LSC may include in the schedules to the financial memorandum, the College must seek the LSC's prior written consent for any secured or unsecured borrowing by itself or its subsidiaries.

- The LSC gives consent for unsecured borrowing by the College of up to 5 per cent of the College's total annual income.
- The LSC gives consent for secured borrowing by the College up to a cumulative maximum of 5 per cent of the College's total annual income in order to finance the construction, refurbishment or purchase of land and buildings provided that only the land and buildings so purchased or constructed are offered as security.

27 The LSC reserves the right to withdraw the College's consent to borrow where the LSC has assessed that there are financial or other major causes for concern in line with guidance which shall be issued after consultation.

Contingent liabilities

28 The College shall not give any guarantees or indemnities other than in the normal course of business.

College companies

29 The Act requires the College to seek consent to participate in companies providing education funded wholly or partly by the LSC. This applies where the College participates in, acquires shares in or securities of a company which was established for a purpose other than the provision of education and where it is proposed to change the company's objectives and to use the company to provide education wholly or partly funded by the LSC.

Financial reporting

30 The LSC shall specify its requirements as to the information to be contained in the College's financial statements, the manner in which they are to be presented and the methods and principles according to which they are to be prepared.

¹Where property transactions involve rental rather than purchase, the LSC will establish a rate at which rent payments or receipts are converted to a capital sum. For the purpose of paragraph 25, a rent is deemed to be a sum 10 times the amount of the annual rent, save where the property is subject to a lease for a fixed term of which fewer than 10 years remain, in which case, in order to calculate the deemed capital sum, the annual rent is to be multiplied by a factor equal to the number of years of the term remaining.

31 The College shall keep proper accounting records and shall prepare financial statements in respect of each accounting period. The College shall provide the LSC with copies of its audited financial statements as specified by the LSC. As charities, colleges are expected to make their financial statements available to members of the public on request.

32 The College must ensure that it has an effective policy of risk management (including appropriate insurance arrangements). The College's risk management arrangements should consider the key principles given in LSC guidance.

33 The College must notify the LSC in writing if at any time there is a significant deterioration in its financial position. Where the LSC has concluded that there is a significant risk to the College's financial position, the LSC may require the College to put in place a plan that will secure a recovery to a satisfactory financial position.

Audit

34 The Governing Body shall appoint an audit committee and arrange to provide for internal and financial statements audit, including regularity audit in accordance with the LSC's *Audit Code of Practice* and any other directions drawn up and published by the LSC in consultation with colleges. Any mandatory requirements under the LSC *Audit Code of Practice* shall be a condition of funding under this financial memorandum.

35 The LSC may from time to time carry out audits at the College and its sub-contractors. The National Audit Office (NAO) may carry out value-for-money studies at the College. The College shall provide the LSC and the NAO with access to all books, records, information, explanations, assets and premises and the LSC may take copies of any relevant documents. The LSC may conduct interviews, including interviews with learners, during its audits at any reasonable time. The LSC will give the College reasonable advance notice in writing of its proposed audits.

36 The College shall retain all records necessary to verify the provision delivered by it or its sub-contractors in relation to this financial memorandum for six years after the end of the period to which funding for the provision relates. Where any of the provision is funded by the LSC using the ESF and the LSC uses any funding as match-funding for an ESF co-financing project, the College must retain all required records until 31 December 2014. Representatives of the European Commission and the European Court of Auditors shall

have the right to visit the College and its sub-contractors.

37 By exception, the DfES's internal auditors and the NAO may accompany the LSC on audits. The DfES and the NAO will normally be concerned with how the LSC carries out its audits and will not normally themselves audit the College.

38 The College shall investigate and report to the LSC all significant cases of internal and external fraud or suspected fraud or irregularity (as defined in the LSC *Audit Code of Practice*). The LSC reserves the right to review the College's fraud investigation files.

Procurement and contracting

39 As an organisation considered to be carrying out significant public business, the College shall comply with all relevant UK and European regulations and requirements for acquisition of all goods and services and works.

Payments to employees on termination of employment

40 Payments made to employees on the termination of their employment should normally only be for the purposes of meeting contractual obligations and items such as pension enhancements within the limits set out in the relevant pension scheme rules. Exceptions should be justified by explicit and quantified reference to value for money.

41 The College must be able to demonstrate that payments in respect of termination are regular, secure value for money and are affordable and avoid spending public funds on settlements where disciplinary action would have been more appropriate.

42 In determining individual settlements to senior postholders, or where settlements might be considered novel or contentious, the College must take appropriate professional advice and the terms of any final agreement should be agreed by the Governing Body. Appropriate records of each stage of negotiations shall be retained and the cost of all settlements must be declared in the College's financial statements. All settlements must be brought to the attention of the College's financial statements auditors.

Provision of information

43 The College shall provide the LSC, or agents acting on the LSC's behalf, with the information the LSC

requires in exercising its responsibilities and to meet European funding requirements. This information shall be of sufficient quality to meet the purposes for which it has been requested. The College will provide the information at the times and in the formats specified by the LSC and its agents. The LSC will consider the impact on College business of the deadlines it specifies for the provision of information. On occasion the LSC will require urgent information from the College, usually as a result of requests to the LSC to fulfil its duties to provide information to the Secretary of State and account to Parliament.

44 The LSC will act reasonably in its requests for information and will have regard to the costs and timescales of providing the information, and where appropriate to its confidentiality. In requesting information, the LSC will also consider information previously supplied by the College to the LSC or other stakeholders with whom the LSC is realistically able to share information. The LSC will also seek to request information that the College gathers to meet its own needs.

45 In the event that the College does not return the information the LSC requires by the specified deadline or that the information is not of an acceptable quality, exceptionally the LSC reserves the right to either to:

- carry out whatever investigations it deems necessary to collect the information. The LSC may, as appropriate, deduct all or part of the cost of the investigations from the LSC's recurrent funding of the College
- use reasonable estimates to exercise the LSC's functions under the Act.

46 If the LSC overpays the College as a result of the LSC's use of estimates, the LSC reserves the right to recover any overpaid funding.

47 The LSC may be required to provide information within 20 working days in relation to the College and this financial memorandum under the Freedom of Information Act 2000. Where by exception the LSC requires additional information from the College in order to respond to such a request, the College shall respond within 14 working days.

48 The College must notify the LSC's Chief Executive in writing of the vacating or filling of the positions of Chair of the Governing Body and Principal and, when the Principal is absent from the college for an extended period, the name of the person who will discharge the Principal's responsibilities during his or her absence.

Interpretation

49 The rights, powers and remedies reserved to the LSC in this memorandum are in addition to any other rights, powers and remedies that it may hold now or at any time in the future. No failure to exercise or delay in exercising by the LSC any of its rights, powers and remedies shall operate as a waiver of them. Nor shall any single or partial exercise of any such right, power or remedy preclude any further or other exercise of the same or any other right, power or remedy.

50 While the LSC reserves the right to resolve any questions arising on the interpretation of any provision of this memorandum, it shall only do so after consulting the College and taking into account any representations made by the College or any other bodies representing the College as the LSC considers appropriate.

Repayment

51 In the event that the College does not comply with any conditions attached by the LSC to the payment of funds, the LSC reserves the ultimate right to require the College to repay all or part of those funds. The LSC shall only make use of this power by exception.

Revision

52 After consultation with the College, and such bodies representing the College that the LSC considers appropriate, the LSC may from time to time revise, revoke or add to any of the conditions in Part 1 of this financial memorandum. The College may itself make proposals to the LSC for such changes. The LSC will from time to time review the thresholds and monetary limits in this memorandum to ensure they remain up to date. The LSC will consult the College if it intends to amend these limits.

Effective date

53 These arrangements shall take effect from 1 August 2006.

Annex B: Consultation on Revision to Financial Memorandum: Responses to Consultation

Please complete and return to:

financialmemorandum@lsc.gov.uk

(An electronic Word copy of Annex B can be provided for
this purpose.)

Or send to:

Kalim Ahmed
Provider Financial Management
Learning and Skills Council
Cheylesmore House
Quinton Road
Coventry
CV1 2WT

Responses are requested by 31 July 2006.
We would welcome earlier responses.



Leading learning and skills

Name of LSC-funded college (*please print*):

Nature of college:

Contact name for enquiries (*please print*):

Telephone:

Fax:

Email address:

Space has been provided for any comments you wish to make.

We have provided additional space at the end of this form for any other general comments you wish to make.

1 Do you agree that the financial memorandum should contain a preamble setting the document in context?

(Refer to paragraph 8)

Please check

Comments

Yes ☐

No ☐

2 Do you agree that the financial memorandum should summarise a college's reasonable expectations of the LSC?

(Refer to paragraph 10)

Please check

Comments

Yes ☐

No ☐

3 Do you agree with the removal of the repetition of sections of instrument and articles of government concerning the governing body, audit committee, principal and clerk?

(Refer to paragraph 22)

Please check

Comments

Yes ☐

No ☐

4 Do you agree with the abolition of an absolute monetary limit normally requiring LSC consent for college borrowing?

Refer to paragraph 26)

Please check

Comments

Yes ☐

No ☐

5 Do you agree with the need to notify the LSC of a significant deterioration in the college's financial position?

(Refer to paragraph 28)

Please check

Comments

Yes ☐

No ☐

6 Do you agree with the explicit statement of the LSC's power to investigate in order to get the information it needs or use estimates for payments, and to recover where estimates proved incorrect?

(Refer to paragraph 33)

Please check

Comments

Yes ☐

No ☐

7 Do you agree with the removal of the requirement for colleges to inform the LSC of the intention to change their nature or location?

(Refer to paragraph 33)

Please check

Comments

Yes ☐

No ☐

8 Do you agree with the clarification that on occasion and by exception the LSC may require colleges to repay funds to the LSC?

Refer to paragraph 34)

Please check

Comments

Yes ☐

No ☐

9 Do you agree that the LSC should make the requirement to consult on changes to the financial memorandum a part of the financial memorandum itself?

(Refer to paragraph 35)

Please check

Comments

Yes ☐

No ☐

General Comments

Name:

Date:

Annex C: Membership of the LSC-Colleges Relationship Group

| | | |
|-------------------|---|-----------------------------------|
| RobWye | National Director, Strategy and Communications | LSC |
| Geoff Daniels | Director of Funding Policy | LSC |
| JulieClayton | Council Secretariat | LSC |
| Mary Heslop | Policy Director, Learning Group | LSC |
| RogerMarriott | Director of Evaluation and Strategic Development | LSC |
| Peter Newson | Director of External Assurance | LSC |
| Richard Noah | Project Director, Agenda for Change | LSC |
| Cathy Robinson | LSC Solicitor | LSC |
| Samantha Rooker | Contract Manager - commercial | LSC |
| Debbie Watson | Head of Policy and Administration, Learning Group | LSC |
| Bill Williams | Procurement Policy Manager | LSC |
| Richard Carter | Chair, LSC London South | LSC |
| Brian Kemp | Chair, LSC Gloucestershire | LSC |
| Clive Leach | Chair, LSC West Yorkshire | LSC |
| James Ramsbotham | Chair, LSC County Durham | LSC |
| Adrian Perry | Consultant | |
| Vickie Wood | Governance and Organisation | DfES |
| Martin Wilson | Governance and Organisation | DfES |
| Julian Gravatt | Director of Funding and Development | Association of Colleges (AoC) |
| Sue Whitham | Head of Secretariat | Sixth Form Colleges' Forum (SFCF) |
| Richard Atkins | Principal | Exeter College |
| Alison Birkinshaw | Principal | Nelson and Colne College |
| Alan Birks | Principal | South Birmingham College |

| | | |
|-------------------|--------------------|---|
| George Bright | Principal | Wiltshire College |
| David Cheetham | Principal | Gateshead College |
| David Collins | Principal | South Cheshire College |
| Peter Corrigan | Principal | Worthing College |
| Sally Dicketts | Principal | Oxford and Cherwell College |
| Geoff Hall | Principal | New College, Nottingham |
| Paul Harvey | Principal | Hertford Regional College |
| Marilyn Hawkins | Principal | Barnet College |
| David Houpt | Principal | Derwentside College |
| Bill King | Principal | Sunderland College |
| Tom Libby | Chair of Governors | Worcester College |
| Nick Lewis | Principal | Broxtowe College |
| Eleanor Mallatrat | Chair of Governors | Cadbury Sixth Form College |
| Jafar Mirza | Chair of Governors | Cambridge Regional College |
| Greg Molan | Principal | Shrewsbury College of Arts and Technology |
| Graham Moore | Principal | Stoke-on-Trent College |
| Margaret Morgan | Chair of Governors | Southwark College |
| Ian Murray | Principal | Chesterfield College |
| Tony Nightingale | Chair of Governors | City College Manchester |
| Pauline Odulinski | Principal | Aylesbury College |
| Peter Roberts | Principal | Stockport College of Further and Higher Education |
| Tony Skates | Governor | Canterbury College |
| John Smith | Principal | Burnley College |
| Peter Stewart | Principal | College of West Anglia |
| Andy Wilson | Principal | Westminster Kingsway |
| David Igoe | Principal | Cadbury Sixth Form College |
| Rob Wilkinson | Principal | Hills Road Sixth Form College |

Notes

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